

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on April 16, 2003 at
4:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)

Members Excused: Sen. Mike Wheat (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HJR 36, 4/15/2003
Executive Action:

HEARING ON HJR 36

Sponsor: Rep. Jeff Pattison, HD 95, Glasgow.

Proponents: Sen. Dan McGee, SD 11, Billings
 Sen. Brent Cromley, SD 9, Billings
 Roger Hagan, Montana Air and Army National Guard
 Officers and Enlisted Associations
 Sen. Aubyn Curtiss, SD 41, Fortine
 Sen. Jerry O'Neil, SD 42 Columbia Falls
 Lani Candelora, Executive Director,
 Montana Catholic Conference
 Julie Millam, Executive Director,
 Montana Family Coalition

Opponents: None.

Opening Statement by Sponsor:

Rep. Jeff Pattison, HD 95, Glasgow, opened by stating our forefathers came to America to escape tyranny, state religion, and unfair mandates. HJR 36 speaks of quite similar instances and regards the recent Ninth Circuit Court of Appeals decision, called "ridiculous" by George W. Bush, and "nuts" by Senator Tom Daschel. Both the U.S. House of Representatives and Congress passed their own Resolution opposing this ruling. Attorney General John Ashcroft said, "The Justice Department will defend the ability of our nation's children to pledge allegiance to the American flag by requesting a hearing by the full Ninth Circuit." Now, recently, Judge Alfred Goodwin, the author of the Ninth Circuit opinion, decided to stay his own ruling until the full appeals court could decide whether to reconsider the case. This is the first court in the country that has actually declared the pledge of allegiance with the phrase "under God" unconstitutional. This is the same court that held the First Amendment protects virtual pornography, child pornography. **Rep. Pattison** feels it is a crime this activist court saw fit to deny millions of school children the right to acknowledge God and feels it is simply unconscionable. **Rep. Pattison** is literally outraged about what is happening in a country founded on and by Godly principles. America has a triune form of government and one branch does not have power over the others, and all three branches balance each other. This is called a separation of powers. **Rep. Pattison** finds it ironic that the Committee is meeting in the Old Supreme Court Chambers where many decisions were based on justice, truth, and balance. This is what happens when ultra-liberal judges like those of the Ninth Circuit Court of Appeals are placed on the federal bench and can go about

social engineering without accountability to the people. Now, there is an opportunity to voice our outrage and deepest concern. This Resolution will urge the United States Supreme Court to overturn the decision by the Ninth Circuit Court of Appeals finding that a teacher-led recitation of the pledge of allegiance and the statutes inserting the words "under God" into the pledge of allegiance violated the establishment clause contained in the First Amendment to the U.S. Constitution. Our own Constitution begins with an acknowledgment of God and also ends with a reference to our Lord. **Rep. Pattison** testified we have a nation that allows the freedom to burn the same flag that protects us. We are strong only if we keep our heritage and values our forefathers built our nation on. Liberty and Justice is for all.

Proponents' Testimony:

Sen. Dan McGee, SD 11, Billings, performed research after the Ninth Circuit Court of Appeals rendered its decision to find out what our forefathers had to say about religion. This research was published in three separate articles in Sen. McGee's local newspaper. For the record, **Sen. McGee** submitted a copy of this research as written testimony and as a proponent of HJR 36, **EXHIBIT(jus82a01)**. **Sen. McGee** pointed out that in the case of Church of Holy Trinity v. United States, the U.S. Supreme Court ruled, "No purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people . . . This is a Christian Nation." The court case that brought this issue to a head is the 1962 case of Engel v. Vitale. In that case, the United States Supreme Court ruled with regard to a phrase called "separation of Church and State." **Sen. McGee** directed the Committee to page 3 of Exhibit 1 and the First Amendment to the Constitution noting it does not included a reference to "separation," "Church," or "State." Nothing in the Constitution has give the federal judges a right to decide for the Executive, more than for the Executive to decide for them. The opinion which gives the judge right to decide which laws are constitutional and what are not, not only for themselves and their own spear of action, but for the Legislature and Executive also in their spears, would make the Judiciary a despotic branch. **Sen. McGee** encouraged the Committee to read the preface to the Charles Darwin's origin of the species. **Sen. McGee** feels passionate about this issue because this nation has a religious freedom, and has exercised that freedom and worshiped and honored God. **Sen. McGee** fears what would happen if God turned his eyes from us, particularly in a time of war. He finds it ironic that the Ninth Circuit would choose to render this decision at exactly the same time we chose to invade Iraq. He wonders whether we have become so enlightened as to imagine we no longer need God. **Sen. McGee** has contemplated what makes us individuals. He

believes it is our inherent spirit that makes us who we are, and he believes that spirit is eternal. **Sen. McGee** hopes and prays the Committee will take this seriously and pass the Resolution, and that people will wake up to the reality that there is a God.

Sen. Brent Cromley, SD 9, Billings, is a proponent of the concept behind the bill. **Sen. Cromley** did not care for the way the bill is worded and submitted a proposed amendment as **EXHIBIT (jus82a02)**. **Sen. Cromley's** support of the bill comes from an opposite direction than that of **Sen. McGee**. **Sen. Cromley** is a big supporter of separation of church and state because he believes only in that manner can it be ensured there is a complete freedom worship. **Sen. Cromley** testified that he regularly receives a publication entitled "*Liberty*" from the Seventh Day Adventist and is challenged by some of the issues they present. **Sen. Cromley** has not really considered this issue until recently. In looking into the decision a little closer, **Sen. Cromley** found that two judges have decided "under God" is acceptable and two have found that "under God" is against our constitutional principles. After reading the Ninth Circuit opinion, **Sen. Cromley** agrees with the intent of HJR 36 because he feels the Ninth Circuit opinion is wrong. The decision as written by Judge Goodwin for a two judge majority over one. **Sen. Cromley** disagrees with the reasoning in the opinion and feels there is a valid basis for maintaining "under God" in our pledge of allegiance. Historical precedent is one reason. Each day, the Senate begins its session with prayer, and the State pays for a Senate Chaplin. This is permissible because of the historical precedent. In **Sen. Cromley's** amendment adds a "WHEREAS" clause because he was surprised to look at the enabling act and find that the Enabling Act required first for the states, "That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said states shall ever be molested in person or property on account of his/her mode of religious worship." **Sen. Cromley** find this significant that this is the first requirement put upon the state. **Sen. Cromley's** fundamental disagreement with the wording in the bill as proposed is that it is result-orientated and tells the court to overturn the case. After having looked at the basis, he believes the case should be overruled, but he does not believe we should tell the U.S. Supreme Court what we think their result should be.

(Tape : 1; Side : B)

Roger Hagan, representing Montana Air and Army National Guard Officer and Enlisted Associations, testified he is pleased that **Rep. Pattison** has brought this resolution, and offered his wholehearted support. He finds it unusual that the Ninth Circuit Court of Appeals made this decision after September 11. He feels

it is appropriate to consider after 9:00 a.m. (ET) on September 11, 2001, we did not beg permission from the Ninth Circuit Court to fall into prayer as people fell to their deaths from the World Trade Center, or as we were watching people run from the Pentagon, or as we were advised of the plane crash in a field in Pennsylvania. What was in our hearts was best displayed that day when children prayed in classrooms without asking permission, and when the leaders in those classrooms prayed with those children. In many cases in operation Iraqi Freedom, prayer was an important part of our military involvement in this operation both before an event, after an event, and especially during the event. Therefore, he supports this Resolution as presented because it is right on the mark. **Mr. Hagen** spoke of Red Skelton's story of being explained the meaning of the pledge of allegiance by a teacher, and how he had stated thirty years ago that it would be a pity if someone tried to eliminate "under God" from the pledge of allegiance.

Sen. Aubyn Curtiss, SD 41, Fortine, does not mind asking the U.S. Supreme Court to overturn the totally unacceptable ruling. She only wished it could be done with stronger terms. She considers the ruling an arrogant attempt to further erode the heritage passed down by our heavenly inspired founding fathers.

Sen. Jerry O'Neil, SD 42 Columbia Falls, is a proponent of HJR 36.

Rep. Pattison stated some proponents were not present due to the time change of the hearing. **CHAIRMAN GRIMES** agreed to keep the hearing open until 5:00 p.m. and accept written testimony from anyone wishing to submit it.

Lani Candelora, Executive Director of the Montana Catholic Conference, submitted written testimony as a proponent of HJR 36, **EXHIBIT(jus82a03)**.

Julie Millam, Executive Director of Montana Family Coalition, submitted written testimony as a proponent of HJR 36, **EXHIBIT(jus82a04)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL asked **Rep. Pattison** how he feels about **SEN. CROMLEY's** proposed "Meadowlark Amendment."

Rep. Pattison responded that he was not in favor of the amendment because he tried to limit the title of the bill and the bill to the Establishment Clause. He does not see anywhere where the phrase "under God" is establishing a religion. **Rep. Pattison** is angered by the actions of the court and would like to see stronger language used. Practicing restraint, however, he limited the title of the bill and the bill to the decision of the Ninth Circuit Court of Appeals decision. He would prefer not to see the amendment added.

Closing by Sponsor:

Rep. Pattison closed by stating the famous American philosopher, Will James, stated "there is nothing so absurd that if you repeat it often enough, people will believe it." In other words, if you tell a lie often enough, even you will believe it. The words "separation of church and state" are not in the Constitution and are not in the Bill of Rights. They are not in any legal documents handed down by our forefathers. Yet, that is a phrase that is heard so many times, the public is almost to the point of actually believe it. This is not establishing a religion. Students and people have the right not to say the pledge of allegiance. To say a person cannot say "under God" in school is just an extreme on the other side. **Rep. Pattison** spoke of his pride in the flag, the Star Spangled Banner, and pledge of allegiance. Our forefather came here to have freedom from state religion, freedom from tyranny, and freedom from over taxation. **Rep. Pattison** feels the Ninth Circuit Court of Appeals made a bad decision and HJR lets the U.S. Supreme Court know that we feel it is our right. **Rep. Pattison** spoke about the erosion of our values and morals. He feels this is an opportunity to say no. **Rep. Pattison** does not feel HJR is too strong but, rather, feels it is inadequate.

EXECUTIVE ACTION ON HJR 36

Motion: **SEN. McGEE** moved **HJR 36 BE CONCURRED IN.**

Motion: **SEN. CROMLEY** moved the "Meadowlark Amendment," Exhibit 2, **BE ADOPTED.**

Discussion:

SEN. O'NEIL feels the Meadowlark Amendment is a refined way to accomplish this and could give the Resolution a better chance to pass, but requested the Committee to resist the amendment. He does this out of respect for **Rep. Pattison** and the Committee.

Placing the amendment on the Resolution will mean it will have to go back to the House.

SEN. PERRY asked **SEN. CROMLEY** if it is his intent to truly say "thoughtfully consider" and not "to overturn" or is his intent, in the end, to have the decision overturned.

SEN. CROMLEY stated after reading the decision, he feels it is in error and should be overturned. However, he disapproves of a result-orientated type command being given to the U.S. Supreme Court.

SEN. PERRY asked if it would be a more gentle command if it read "urging the United States Supreme Court, after having thoughtfully considered the arguments against the holding and the decision of the Ninth Circuit Court of Appeals to overturn the decision."

SEN. CROMLEY agreed it would be more gentle, but would accomplish the same thing.

SEN. CURTISS spoke against the amendment as well because the Resolution, as drafted, suits the purpose wonderfully. She feels the Meadowlark Amendment will weaken the Resolution.

CHAIRMAN GRIMES commented that there is a timing issue which needs to be considered.

(Tape : 2; Side : A)

With all due respect, **CHAIRMAN GRIMES** feels this is an issue which needs to be passed in a point blank, practical matter.

Vote: **SEN. CROMLEY's** motion that the "Meadowlark Amendment," Exhibit 2, **BE ADOPTED, FAILED 3-6**, with **Senators Mangan** and **Cromley**, voting aye, and **Senator Wheat** voting aye by proxy.

Vote: **SEN. MCGEE's** motion **HJR 36 BE CONCURRED IN CARRIED 6-3**, with **Senators Mangan** and **Cromley**, voting no, and **Senator Wheat** voting no by proxy. **SEN. MCGEE** will carry HJR 36 on the Senate floor.

ADJOURNMENT

Adjournment: 4:50 P.M.

SEN. DUANE GRIMES, Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus82aad)